UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/652
20 July 1994

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 652

Case No. 689: SU'OUD

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 10 July 1992, Sa'id Khaled Su'oud, a staff member of the United Nations Relief and Works Agency for Palestine Refugees, hereinafter referred to as UNRWA, filed an application requesting the Tribunal to order, inter alia:

"...

(b) Rescinding the decisions of the Respondent ..., ordering the Applicant's transfer on demotion, and addressing him with a final warning...;

(c) Payment of compensation for the injury, humiliation and discrimination suffered by the Applicant ..., and the expenses sustained estimated at US$15,000;

(d) Declaring the proceedings ... being vitiated by abuse of procedure 'détournement de procédure' by not accepting my legal counsel, the retired area staff member, as my representative...;

(e) Ordering the Respondent's payment of the fees of my legal counsel."

Whereas the Respondent filed his answer on 22 January 1993;

Whereas the Applicant filed written observations on 15 April 1993;

Whereas, on 16 April 1993, the Applicant submitted additional pleas requesting the Tribunal "to hold oral hearings and to order the production of certain documents and files, ... [as well as] costs sustained which include mail fees, telexes to COMGEN [Commissioner General] [which are] estimated at US$800. ..."

Whereas, on 27 June 1994, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 28 December 1981, on a temporary assistance basis, as an area staff member, as a Cleaner in the Damascus Vocational Training Centre (DVTC). On 8 February 1982, his appointment was converted to a temporary indefinite appointment at the G-1, step 1 level. On 15 September 1982, the Applicant was transferred to the post of Guard "A", also at the DVTC. After completion of his probationary service of one year, the Applicant was promoted to G-2, step 1 level.

On 13 April 1991, the Principal of the DVTC informed the Acting Field Administration Officer in the Syrian Arab Republic of the theft of tools and consumable items at the DVTC, on 4 April 1991. According to the Principal, the Applicant did not pass on all the information he had regarding the theft. The Principal, accordingly, recommended that the Applicant be downgraded from grade 02 to grade 01 and transferred "to a post of Labourer or similar post grade 01 when a vacant post is available in the Centre."

On 20 April 1991, the Director of UNRWA Affairs in the Syrian Arab Republic appointed a Board of Enquiry to investigate the matter. On 21 May 1991, the Board submitted to the Field Director its report, which concluded that the Applicant had been involved in the misappropriation of tools and consumable items from the Centre and had "acted as an accomplice to Mr. Ibrahim Hourani

and assisted him in taking training supplies out from the Damascus Training Centre."

In a memorandum dated 13 June 1991, the Acting Field Administration Officer informed the Applicant that in the light of those conclusions:

> "... It has, therefore, been decided to demote you to grade 01 and to transfer you to a post of Sanitation Labourer grade 01 at Sbeineh Camp, Damascus Area, with effect from 15 June 1991.
>
> In view of the foregoing, this letter is a final warning. If your work performance should again be the subject of complaints, or any future misconduct, the Agency will be obliged to take appropriate action. Such action may include your immediate dismissal from the Agency's service."

On 14 July 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

On 6 October 1991, the Applicant requested the Field Director to review the administrative decision of 13 June 1991. In a reply dated 9 October 1991, the Officer-in-Charge at the Field Office informed the Applicant that the decision would be maintained.

The JAB adopted its report on 4 February 1992. Its evaluations and recommendations read, in part, as follows:

> "IV. Evaluations
>
> 1. The report of the Board of Enquiry which propelled findings made upon investigations, queries and hearing testimonies of witnesses does not lack any credibility, as is alleged by the Appellant, for the following reasons:
>
> ...
>
> The Board believes that the Administration's decision of transferring the Appellant on demotion effective 15 June 1991, has also given him a real chance to remain in the Agency's service, thus enabling him to cater to his needs, with a view to improved performance and devotion while conforming to Agency Rules and Regulations.

V. Recommendations

In view of the foregoing, the Board unanimously makes its recommendations that

1. The Administration's decision of 13 June 1991 in respect of the Appellant be upheld, and

2. That the case be dismissed."

On 18 June 1992, the Commissioner-General transmitted to the Applicant a copy of the JAB's report and informed him as follows:

> "I have examined the report of the Joint Appeals Board and accept the conclusions arrived at by the Board. I must, therefore, inform you that the Administration's decision to transfer you on demotion will stand."

On 10 July 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent failed to produce documents or witnesses to support his views.

2. The Applicant's alleged accomplice provided the Respondent with material evidence to show that the incident of 4 April 1991 occurred on written instructions from the Principal.

3. The Respondent's decision constitutes a détournement de pouvoir.

4. The Applicant was entitled to be represented before the JAB by outside counsel.

Whereas the Respondent's principal contentions are:

1. It is within the discretionary authority of the Commissioner-General to allow representation by serving staff members only to make the JAB procedure more efficient.

2. In view of the exceptional circumstances of his case, involving the security of witnesses, the Applicant should not be given access, as he requested, to the identity of trainees and

staff members and of witnesses whose names have been deleted from the first report of the Board of Enquiry.

3. The decision to demote the Applicant was based essentially on the report of the Board of Enquiry.

4. The Applicant's conduct could have justified a more severe disciplinary measure than transfer on demotion.

The Tribunal, having deliberated from 27 June to 20 July 1994, now pronounces the following judgement:

I. This case is closely related to the case dealt with by the Tribunal in its Judgement No. 654, Hourani, rendered today.

II. The Tribunal notes that the Respondent was strictly applying the Area Staff Rules in deciding who could represent the Applicant before the JAB.

III. The Respondent demoted and transferred the Applicant to the post of Sanitation Labourer, with effect from 15 June 1991. He also took disciplinary action against Mr. Ibrahim Hourani, another area staff member, by terminating his services. The basis of the Respondent's action seems to be that both of them were involved in the theft of considerable stores from the DVTC. While Mr. Hourani was mainly responsible for organizing and directing these thefts, spread over a long period of time, the Applicant was merely his accomplice, carrying out his wishes and instructions.

IV. The thefts of equipment from the DVTC had been continuing for quite a while, but because of poor administration, combined with little or no supervision and control, nothing came to the notice of the Agency until 4 April 1991, when the Principal, DVTC, was informed that "a substantial theft of tools and consumable items had taken place". The Principal made a preliminary investigation and eventually a Board of Enquiry was established.

On 21 May 1991, the Board submitted its report, entitled "Misappropriation of Tools and Consumable items as well as other irregularities in the Damascus Training Centre". It concluded with a scathing criticism of Mr. Hourani and identified the Applicant as one of his accomplices. It stated inter alia that had the Board had time to investigate more in this direction, "there existed a realistic chance to detect another accomplice of Mr. Hourani". This Board of Enquiry was followed by an "Operational Audit Report on Vocational Training Centre in Damascus" which establishes, with proof and conviction, that much was remiss in the Administration of the Centre. The Respondent now asserts that most of the audit report's recommendations have been properly implemented.

V. Be that as it may, the Tribunal considers that these investigations and reports, as well as the report of the JAB, show conclusively that there were many opportunities in the DVTC for corruption and other wrong-doings and that apart from the Applicant, there were many others who might have been guilty of misdemeanours of some kind. However, such a conclusion has no relevance to deciding if the Applicant was properly found to be responsible for thefts which undoubtedly occurred. The Tribunal considers that the Applicant cannot escape his own responsibility by simply pointing an accusing finger at others.

VI. Before determining the main issue - whether the culpability of the Applicant has been properly established and the consequent punishment correctly imposed - the Tribunal will deal with some peripheral issues raised by the Applicant.

The Applicant asks for various documents and testimony on which, he asserts, the Respondent based his opinion adverse to the Applicant. These have been denied to him. He adds that he was deprived of the opportunity to cross-examine witnesses. The Respondent argues that, in the circumstances of the case, making available some of the evidence and/or identifying several of the witnesses would expose them to physical violence and other threats.

The Tribunal holds that the procedure followed by the Respondent in the particular circumstances of this case, did not adversely affect the rights of the Applicant, and consequently, did not lead to a miscarriage of justice. This conclusion is strengthened by the painstaking way in which the Board of Enquiry set about its task to determine the course of events, particularly those of 4 April 1991, when the loss of much material, through theft, was suffered by the Agency. Furthermore, the Tribunal considers that the evidence available to it is adequate for deciding whether the Applicant has been fairly treated or not.

VII. The Tribunal has considered, with special attention, four important documents: The Report dated 13 April 1991 of the Principal (who died early in 1992); the Report of the Board of Enquiry of 21 May 1991; the Audit Report of the DVTC of 15 November 1991, covering all the activities of the Centre, and the JAB report of 12 May 1992. Leaving aside the Audit Report, whose criticism the Respondent accepts and which lends some strength to the Applicant's contention that many others in the DVTC could have been involved in wrong-doings, the Tribunal finds that, despite minor shortcomings and deficiencies, both of reference and language (often translation from Arabic), all the reports have made serious and conscientious efforts to establish the truth about the widespread theft of the Agency stores at the DVTC and to assess the Applicant's responsibility in some of them. They are unanimous in concluding that the Applicant was involved, as an accomplice of Mr. Hourani, the principal culprit. The Tribunal finds no reason to disagree. All the criticisms, objections and innuendos which the Applicant has levelled not only against the reports, but also against the witnesses and the evidence on which the Respondent relied, do not, in the view of the Tribunal, contradict the broad conclusions reached by the Board of Enquiry, and later upheld by the Joint Appeals Board.

VIII. The disciplinary measure taken by the Respondent - demotion with transfer - is entirely within the discretion of the Respondent. The Applicant has not produced any convincing evidence of bias, prejudice or other extraneous factors which might vitiate the exercise of such discretion. In a place where people work in close proximity to each other, the Principal's views on the Applicant's involvement might be widely known in advance. Even if the Applicant's statement of 22 September 1991, (four months after the Board of Enquiry Report), suggesting that the punishment of the Applicant had been decided in advance were true, it would make no material difference to the conclusion reached by the JAB.

IX. In the circumstances of the case and consistent with its jurisprudence that in disciplinary matters the Respondent has broad discretion, provided there is no proof of bias, prejudice or other similar extraneous factors, the Tribunal holds that the Respondent exercised his discretion properly, taking into account the Applicant's secondary role in the activities of Mr. Hourani.

X. In view of the foregoing, the Tribunal rejects the application as well as the Applicant's request for costs.

(Signatures)

Samar SEN
President

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 20 July 1994

R. Maria VICIEN MILBURN
Executive Secretary